

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

ARAMARK SERVICES, INC.

and

Case No. 29-CA-28625

**UNION OF NEEDLE TRADES,
INDUSTRIAL AND TEXTILE EMPLOYEES, HOTEL
EMPLOYEES AND RESTAURANT EMPLOYEE
INTERNATIONAL UNION, LOCAL 100**

***Kevin Kitchen, Esq., Counsel for the General Counsel
Vonda Marshall Harris, Esq., for the Respondent
Lia Fiol-Matta, Esq., Counsel for the Charging Party***

SUPPLEMENTAL DECISION

Statement of the Case

The charge in this case was filed on November 8, 2007 and the Complaint was issued on February 28, 2008. The Complaint alleged that since on or about October 3, 2007, the Respondent has refused to furnish certain information that the Union requested in relation to a grievance it filed on or about September 18, 2007.

The Respondent's main arguments are **(a)** that the information sought was not relevant to the grievance filed and **(b)** that the grievance, in any event, could have had no merit because of the terms of contract's Article 6(b) and/or because the subject matter had been waived by virtue of the management rights clause contained in Article 27 of the contract.

On July 18, 2008, Administrative Law Judge Howard Edelman issued an initial decision in this case. However, on August 13, 2008, he asked the Board to remand the Decision in order to correct certain typographical errors. Thereafter, the Judge issued a Supplemental Decision on August 27, 2008, finding that the Respondent had violated the Act and ordering that it turn over all of the requested information. But this was again remanded on February 26, 2009, because, in the Board's opinion, the Judge failed to "provide an adequate basis for review." Judge Edelman has since retired.

This matter was then assigned to me and the parties agreed that the assigned Administrative Law Judge could utilize the transcript and exhibits in the underlying case in order to issue a new Supplemental Decision.

Having reviewed the entire record, and after considering the briefs previously filed, I make the following

FINDINGS AND CONCLUSIONS

I. Jurisdiction

5 The Complaint alleged, the Respondent admitted and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. The Respondent's Answer also admitted and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. The Alleged Unfair Labor Practice

10 The record shows that there are no disputed facts and no material credibility issues.

15 At the time of these events, the Respondent and the Union were parties to a collective bargaining agreement that ran from March 1, 2005 to February 28, 2008. This agreement covered a unit consisting of the Respondent's food service employees and Java City Coffee Shop employees employed at Citibank, Long Island City New York, excluding all vending service employees, managers, assistant managers, clerical, supervisory and professional employees and guards, as defined in the Labor Management Relations Act, as amended.

20 The collective bargaining agreement, at Article 23, contains a multi-step grievance procedure that culminates in binding arbitration.

25 The evidence shows that within the bargaining unit, the Company operates three departments; a cafeteria employing about 18 to 20 people; a coffee shop employing about three people; and a catering department that employs about five people. The evidence shows that the people who work in the cafeteria are normally assigned to work from 7:30 a.m. to 2:30 p.m. and that they typically work 8 hours a day on a 40 hour per week schedule. The evidence also shows that the coffee shop is usually open from 7:00 a.m. to 4:00 p.m. and that the employees at this location are normally scheduled to work 8 hours per day on a 40 hour per week schedule. There is no information about the work hours of the employees who are in the catering department.

30 With respect to hours of work, the collective bargaining agreement, at Article 6(a), states that for the purpose of computing pay, the workday shall consist of 8 hours per day and 40 hours per week, albeit that this "shall not be construed as a guarantee of hours per day or per week."

35 The evidence shows that since at least 2005, the Company has reduced the number of hours worked by the cafeteria and coffee shop employees during the summers.

40 In 2005, the Company advised the Union, in writing, that after Memorial Day, it would be closing its operations a half hour earlier and that therefore, all employees would have 14 Fridays reduced by one half hour. At the end of the summer, (after Labor Day), the employees were returned to their normal 8 hour per day/40 hour per week schedules.

45 Similarly in 2006, the Company advised the Union, in writing, that the 14 Fridays after Memorial Day, would entail the employees receiving a reduction by one half hour. As in 2005, once Labor Day passed, the employees were returned to their normal 8 hour per day/40 hour per week schedules.

On April 24, 2007, the Company sent a memorandum to the Union regarding the cafeteria that stated:

The purpose of this letter is to give you, Local 100 two weeks notice of the following changes to our operations. Effective Tuesday May 9, 2007, the cafeteria here at One Court Square will be closing at 2:00 p.m.

On May 23, 2007, the Company followed up with another memorandum to the Union relating to the coffee shop that stated in pertinent part:

In addition, as was done the prior year, this letter is also giving you notice that the following fourteen Fridays we will be closing all of our operations ½ hour earlier than we presently close. This will result in all employee work days being reduced ½ hour.

As in 2005 and 2006, the hours for the cafeteria and coffee shop employees were reduced. But this time, their hours were reduced by one half hour every day instead of one half hour on each Friday. As far as I know the hours of the catering department workers were not reduced during the summers.

In September 2007, union agent, Jose Mayorga, received word from his shop stewards that after Labor Day, the Company did not resume the normal scheduled 8 hour per day/40 hour per week schedules. As a result, Mayorga and his three shop stewards arranged for a meeting with company manager John Bello and complained about the Company's failure to resume the normal number of hours for the employees. Mr. Bello stated that it was the Company's position that it would not do so because business was slow. At this meeting, the Union asked that the Company produce documentation proving that business was slow and Bello said that he would have to check with his bosses. At this meeting, no specific records were discussed and the Union did not specify, at this time, what kind of documentation it wanted.

On September 17, 2007, the Union filed a grievance that alleged that the Company breached past practice and violated Article 6 of the contract. The remedy sought was a restoration of the normal work hours.

By letter dated September 18, 2007, Mayorga faxed a letter to the Company. This stated:

UNITE HERE, Local 100 is investigating a grievance filed by 09/17/07. In order to investigate and determine the merits of this grievance, we are requesting the following information to be provided within seven (7) days.

1. Two years of weekly costumer [sic] counts of Café & catering.
2. Two years of weekly sales reports of Café and catering.
3. Two years of weekly time card of all employees.
4. Two years of weekly payroll record of all employees.
5. Copy of Aramark's current contract with Citigroup as well as the previous contract with Citigroup.
6. Updated Bargaining Unit List, including S. Security, Full Name, Date of Hire, Pay of Rate and Classification.

At another meeting held on September 28, 2007, Mayorga again complained about the failure of the Company to restore normal working hours and was told that this was not going to happen. There is no evidence that Mayorga explained why he wanted the particular information

requested in the September 18 letter. There is no dispute that he was given an updated list of the bargaining unit employees. So, in that regard, it seems that the Respondent promptly complied with Item 6 on the Union's request.

5 Not receiving any further reply to its request for information, the Union reiterated its request on October 1, 2007. This letter went on to state that the Company's failure to furnish the requested information would cause the Union to process the grievance to Step 3 or arbitration and that it might file a charge with the NLRB.

10 By letter dated October 3, 2007, the Company sent the following letter:

The following is in response to the request for information you filed on September 18, 2007. Aramark does not wish to divulge the information requested by you... We believe that the information requested does not
15 pertain to the grievance filed in regard to a reduction of service hours. However, at our last meeting on September 28, 2007, we did provide to you the current bargaining unit list.

20 On October 12, 2007 the Union sent another letter to the Company, essentially repeating its October 1 letter.

On October 12, 2007 the facilities operated by the Respondent were closed for renovations. They were reopened on January 15, 2008.

25 Finally, on January 30, 2008, (after the charge had been filed with the NLRB), the Union's attorney wrote to the Respondent and stated:

In order to clarify any miscommunication that may exist and to assist the Union in properly investigating this grievance, we assert that the information
30 requested does, in fact, pertain to the reduction in hours grievance concerning Citibank, Long Island City. In the past, the Employer reduced the hours worked by employees at this Citibank location, including the Java Coffee Shop, in the summer from 30 hours to 37 hours a week due to lower volume of business, and restored all employees hours back to 40 hours a week around early
35 September, close to Labor Day.

On or around Labor Day of 2007, ARAMARK did not restore the 40 hours work week ... as was the practice in the past and is required by Article 6 of the collective bargaining agreement which states that a work day for employees
40 shall consist of 8 hours per day and 40 hours per week.

You stated to Mr. Mayorga that the reason for ARAMARK not restoring the 40 hour a week schedule was due to a low volume of business. The Union's request for employees' timecards, payroll records, ARAMARK's current and
45 previous contracts with Citigroup as well as other financial information regarding food services is necessary in order for the Union to assess whether the reduction in hours is legitimate. Therefore, consider this letter Local 100's fourth written requests for said documents....

50 There was no response.

Analysis

The present case involves a situation where the Union sought certain information in relation to its grievance filed on September 17, 2007. In that grievance, as I read it, the Union asserted that the Respondent violated past practice and Article 6(a) of the contract by reducing the employees' hours during the summer in excess of what it had done in prior years *and* by failing to restore their normal hours after Labor Day. In this regard, I note that in the two previous years, the Company reduced the hours of its cafeteria and coffee shop employees by eliminating one half hour on each of 14 Fridays. However, in 2007, the Company reduced each employee's hours by one half hour every day. When the Union's representatives orally complained about the Company's failure to resume the normal schedules, they were told that business was too slow to do so.

Under Section 8(a)(5) of the NLRA, each party to a bargaining relationship is required to bargain in good faith. And part of that obligation requires both sides to furnish relevant information upon request. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). Such requests for information may come in essentially two contexts; (a) bargaining for a collective bargaining agreement or (b) processing a grievance. In relation to information sought during the term of an existing contract, a Union's responsibilities include: (1) monitoring compliance and effectively policing the collective-bargaining agreement, (2) enforcing provisions of a collective-bargaining agreement, and (3) processing grievances. *American Signature, Inc.*, 334 NRB 880, 885 (2001).

Where there is a request for information in either context, the Board makes a distinction between information which is presumptively relevant and all other information. In cases where the information requested is presumptively relevant, (such as the names of employees, their job titles, rates of pay, hours of work, etc.), the party seeking the information is not required to show relevance. *Ohio Power Co.*, 216 NLRB 987, 991 (1975), *enfd.* 531 F.2d 1381 (6th Cir. 1976); *Dyncorp/Dynair Services*, 322 NLRB 602 (1996), *enfd.* 121 F.3d 698 (4th Cir. 1997); *International Protective Services, Inc.*, 339 NLRB 541 (2003); *Deadline Express*, 313 NLRB 1244 (1994). As to presumptively relevant requests, it is the employer that has the burden of proving the lack of relevance, and a union does not need to make a specific showing of relevance unless the presumption is rebutted. *Contract Carriers Corp.*, 339 NLRB at 858.

In the present case, the Union's September 18, 2007 letter requesting information included a demand for an updated list of the bargaining unit employees. This information was, according to Mayorga, furnished at a meeting on September 28, 2007. Therefore, in this respect, the Company fulfilled its obligation.¹

If the information sought relates to the processing of a grievance, (or potential grievance), the legal test is whether the information is relevant to the grievance and the determination of relevancy is made based on a liberal, discovery type of standard. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967); *Knappton Maritime Corporation*, 292 NLRB 236 (1985). Moreover, the fact that the information may even tend to disprove a grievance is as equally relevant as those situations where the information would tend to support a grievance. This is because the process of resolving grievances is served by the disclosure of information which will tend to resolve grievances one way or the other. *NLRB v. Acme Industrial Co.*, *supra*,

¹ I note that social security numbers are not considered by the Board to be presumptively relevant. *Polymers, Inc.*, 319 NLRB 26 (1995). And in this regard, I note that in the age of identity theft, social security numbers need to be handled with care.

Square D Electric Co., 266 NLRB 795, 797 (1983); *Ohio Power Co.*, 216 NLRB 987, 991. Thus, a union is entitled to information to determine whether or not to file or process a grievance. *J. I. Case Company v. NLRB*, 253 F.2d 149 (7th Cir. 1958); *Universal Atlas Cement Division of United States Steel Corporation*, 178 NLRB 444 (1969).

5 The Respondent contends that the information sought by the Union is not producible because (a) under the terms of Article 6(a) the collective bargaining agreement, the Union's grievance could not possibly have any merit and (b) under the Article 27, (the management rights clause), the Company cannot be compelled to bargain about hours during the life of the contract. I do not agree.

10 Article 6(a) defines the default hours for the employees as being 8 hours per day and 40 hours per week. And although the contract explicitly does not guarantee those hours, and thereby giving the Company some discretion, I think that an arbitrator could reasonably conclude that a reduction of those hours, *particularly as to all or a substantial portion of the bargaining unit*, must be justified by some set of objective circumstances outside of the Company's control. Otherwise, the contract would really be construed as meaning that the Company has the sole discretion to determine the hours of work at any time, at any place and for any reason. But that is not what the contract says and it is my opinion that the Union has a colorable claim for its grievance.

The management rights clause set forth at Article 27 states:

25 The Employer shall have the exclusive right to plan, direct and control its operations; the right to decrease or increase the scope thereof; the right to install or remove equipment; the right to determine the size and composition of the working force; the Employer may, after negotiations with the Union, establish and maintain reasonable operating rules and regulations.

30 The Employer may continue and from time to time may establish or change such rules and regulations as it may deem necessary and proper for the conduct of its business, provided that the same are not inconsistent with any of the provisions of the Agreement. All such rules and regulations shall be forwarded to the Union and observed by the employees.

35 While fairly broad, it seems to me that this clause is also very general and non-specific as to the issues in this case. The right to decrease or increase the scope of its operations, does not, in my opinion, translate into a right to change, at the company's sole discretion, the normal working hours of its employees. Therefore, I do not agree that the above noted clause constitutes a waiver of the Union's right to bargain about either the reduction in hours during the summer months, or the restoration of hours after the summer is over. *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693 (1983); *Johnson Bateman Co.*, 295 NLRB 180 (1989).

45 The issue here is the right of the Union to obtain certain information in relation to a grievance relating to the hours of work. I am not called upon to decide the merits of that grievance. But as noted above, I have concluded that the Union has a colorable claim under the contract and therefore that this information is relevant to that claim.

50 In response to the Union's complaint that it failed to restore normal hours, the Company asserted that it did not do so because work was slow. (By this, I assume that Mr. Bello meant that after Labor Day 2007, there were fewer customers particularly during the later hours of the day). Based on that response, I conclude that the Union's request for two years worth of

information showing the weekly number of customers and the weekly sales reports to be relevant. As noted above, the reduction in hours during the summer of 2007 substantially exceeded the reduction in hours during the summers of 2005 and 2006 and it is my opinion, that this type of information, limited to the cafeteria and coffee shop departments, could be relevant to determine if the larger reduction in hours for 2007 was justified by the amount of business compared to what it had been in previous years.

I also think that payroll information in the form of payroll records, (or if necessary time cards), for the cafeteria and coffee shop employees over the requested period of time could be relevant to determine whether the reduction in hours in 2007 was “reasonable” compared to the reductions in their hours during 2005 and 2006, particularly when compared to the sales and customer count information described above. Moreover, assuming that an arbitrator concluded that the Company breached its contract in relation to the reduction in hours and/or the failure to resume normal hours after Labor Day, he or she might be called upon to decide which of the employees had suffered a loss and how much that loss might be. As such, the Union would need to have the payroll records of those individuals who worked during and after the summer of 2007 in order to determine who might be eligible for backpay.

The Union also requested a copy of the Respondent’s present and past contracts with Citigroup, the entity that is the Respondent’s customer. I do not construe contracts with customers to be presumptively relevant. *F.A. Bartlett*, 316 NLRB 1312. In explaining why the Union wanted to see these contracts, Mr. Mayorga stated that they might show that Citigroup was in some way giving the Respondent a subsidy. Unfortunately, I really don’t understand what he means by this and the evidence shows that neither he nor the Union’s attorney ever explained to the Company why those contracts could be relevant to the grievance.

Conclusions of Law

(1) By refusing to furnish to the Union certain information the Respondent has violated Section 8(a) (1) and (5) of the Act.

(2) The aforesaid violation affects commerce within the meaning of Section 2(2), (6) and (7) of the Act.

(3) The Respondent has not violated the Act by failing to furnish to the Union copies of its present or past contracts with Citigroup.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended ²

² If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, Aramark Corporation, its officers, agents, successor, and assigns, shall

1. Cease and Desist from

(a) Refusing to furnish to the Union information relating to the processing of a grievance alleging that the Respondent has breached past practice and violated the collective bargaining agreement by reducing the hours of bargaining unit employees and failing to restore those hours after the Summer of 2007.

(b) In any like or related manner interfering with, restraining or coercing employees in the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Except to the extent already furnished and except for copies of contracts between the Respondent and Citigroup, furnish to the Union, upon its request, the information sought in the Union's September 18, 2007 letter, limited however, to the cafeteria and coffee shop employees covered by the collective bargaining agreement.

(b) Within 14 days after service by the Region, post at its facility in New York, New York, copies of the attached notice marked "Appendix ."³ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since October 25, 2007.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., September 4, 2009.

Raymond P. Green
Administrative Law Judge

³ If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

**Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to furnish to the Union of Needle Trades, Industrial and Textile Employees, Hotel Employees and Restaurant Employees International Union, Local 100, information relating to the grievance/arbitration process or that is relevant to the administration of our collective bargaining agreement with that Union.

WE WILL NOT in any like or related manner interfere with, restrain or coerce employees in the rights guaranteed them by Section 7 of the Act.

WE WILL on request, furnish to the Union, the information sought by the Union in its September 18, 2008 letter, except to the extent that certain information has already been furnished and except for copies of contracts between Aramark Corp. and Citigroup.

ARAMARK SERVICES, INC.

(Employer)

Dated _____

By _____

(Representative)

(Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

Two MetroTech Center (North), Jay Street and Myrtle Avenue, Suite 5100

Brooklyn, New York 11201-4201

Hours: 9 a.m. to 5:30 p.m.

718-330-7713.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 718-330-2862.